

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,138

FREDERICK C. ZANGARDI,

Appellant,

v.

WALTER N. TOBRINER, PRESIDENT

and

FREDERICK J. CLARKE, MEMBER

and

JOHN B. DUNCAN, MEMBER
BOARD OF D.C. COMMISSIONERS,

Appellees.

*Appeal From a Judgment of the United States
District Court for the District of Columbia*

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

FILED APR 5 1935

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STATEMENT OF QUESTIONS PRESENTED

1. Whether the United States District Court for the District of Columbia was in error in failing to adjudge as prayed in Count Two of the Complaint which is an action for declaratory judgment, to adjudge that Title 4, Section 527 of the District of Columbia Code (1961 Edition), includes retirement for aggravation by police duty of an injury or disease which did not originally arise in the performance of police duty.

2. Whether the Court below erred in denying plaintiff's motion for summary judgment on Count One and in granting defendants' motion for summary judgment on Count One since defendants admit as a matter of fact that the condition for which plaintiff was ordered retired was a condition aggravated by police duty, the relief prayed for in Count One being for an order directing defendants to order plaintiff retired pursuant to Title 4, Section 527 of the District of Columbia Code (1961 Edition) rather than Title 4, Section 526.

3. Whether the Court below erred in not finding that the Corporation Counsel for the District of Columbia is erroneously interpreting Title 4, Section 527 of the District of Columbia Code (1961 Edition) in that the Corporation Counsel's interpretation gives no meaning or effect to the word "aggravation," which word is present in the statute and must have been included by Congress for some purpose.

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District Court for the District of Columbia*

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a final judgment of the United States District Court for the District of Columbia denying appellant's motion for summary judgment and granting appellees' motion for summary judgment entered on November 20, 1964 (J.A. 20); this appeal filed December 17, 1964 (J.A. 21).

This Court has jurisdiction by virtue of 28 U.S.C. Sections 1291, 1294 and 2106 to review the judgment of the Court below.

The complaint filed in the Court below was in Two Counts, Count One for Mandatory Injunction Directing Retirement of Police Officer for Disability Incurred or Aggravated by Police Duty and Directing Reversal of the Order Retiring Police Officer for Disability Not Incurred in Performance of Duty, and Count Two, for Declaratory Judgment praying the Court adjudge that Title 4-527 of the District of Columbia Code (1961 Edition) includes aggravation of an injury or disease which did not originally arise in the performance of duty if the condition for which a police officer is retired was aggravated by police duty, and that since the condition for which plaintiff was retired was admitted to have been aggravated by police duty that plaintiff is entitled to retirement pursuant to Title 4-527 rather than Title 4-526 (J.A. 1, 7, 16). Count Two alleges that the Commissioners of the District of Columbia and their agents are misinterpreting Sections 526 and 527 of Title 4 of the District of Columbia Code (1961 Edition) and that the erroneous interpretation of the statute deprived appellant of substantial sums of money. Jurisdiction in the Court below is based on Title 11, Section 306 of the D.C. Code, 1961 Edition and 28 U.S.C. Section 2201.

STATEMENT OF THE CASE

This is an appeal from the order of the United States District Court Judge George L. Hart, Jr., denying appellant's motion for summary judgment and granting summary judgment in favor of appellee (J.A. 20).

Appellant Frederick C. Zangardi was appointed a member of the Metropolitan Police Department on November 28, 1949, serving continuously until June 6, 1961, when he was ordered by the Board of Police and Fire Surgeons to appear before the Police and Firemen's Retire-

ment and Relief Board of the District of Columbia for consideration of retirement. After hearing by the Retirement Board on August 3, 1961 and October 3, 1961, appellant was ordered retired effective October 31, 1961, pursuant to Title 4, Section 526 of the D.C. Code, 1961 Edition, for injury or disease received or contracted other than in the performance of duty as a policeman (J.A. 16). Appeal was timely noted to appellees, the Personnel Officer, D.C., submitting to appellees a statement of facts developed by the Retirement Board, wherein it was set out "That the Board was unable to find any evidence that would support a conclusion that appellant's condition arose from police duty but that there was ample reason to find that police duty aggravated appellant's condition" (J.A. 16). On January 29, 1962, appellees sustained the order of the Police and Firemen's Retirement and Relief Board which had ordered appellant retired under Title 4-526 of the D.C. Code, 1961 Edition (J.A. 16).

On March 24, 1962, appellant brought this suit in the United States District Court for the District of Columbia praying in Count One that the Court direct appellees to reverse their order retiring appellant under Title 4, Section 526, and directing appellees to order appellant retired under Title 4, Section 527, retroactive to October 31, 1961, and Count Two for Declaratory Judgment, praying that the Court adjudge that Title 4, Section 527 of the D.C. Code, 1961 Edition, includes aggravation of an injury or disease which did not originally arise in the performance of duty as a policeman, and that, since it is admitted that the condition for which appellant was ordered retired was aggravated by police duty, that the Court adjudge that appellant is entitled to be retired pursuant to Title 4, Section 527, rather than Title 4, Section 526 of the D.C. Code, 1961 Edition (J.A. 1).

Appellees filed their answer to the complaint on April 16, 1962, admitting the allegation of paragraphs four and eleven of the complaint where it was alleged "That there was ample evidence that police duty

aggravated the condition for which plaintiff was retired" (J.A. 6, 7). The answer, in paragraph 12, admits that the Police and Firemen's Retirement and Relief Board is bound by the interpretation of Title 4, Section 527 as set out in paragraph 11 of the complaint as the interpretation of the Corporation Counsel as follows (J.A. 7):

"Whenever the Commissioners or their designated agents make a finding based upon substantial evidence that the member was injured or contracted a disease in the performance of duty, that such injury or disease was not sufficient to permanently disable him for the performance of duty, that after being restored to health he was returned to duty and thereafter in the further performance of duty the injury or disease originally contracted in the performance of duty was aggravated by such further performance of duty so as at that time to permanently disable him for the further performance of duty, then the Commissioners or their designated agents may, on the basis of the above findings, retire such member pursuant to authority contained in 4-527."

On July 2, 1962, appellant filed a motion for summary judgment on Count Two of the Complaint, with a statement of undisputed facts with a memorandum attached thereto as "Exhibit A" and points and authorities in support of the motion for summary judgment (J.A. 12). On August 1, 1962, appellees filed a cross-motion for summary judgment on Count Two of the Complaint, a memorandum in support of the cross-motion and in opposition to appellant's motion for summary judgment (J.A. 15) and on August 2, 1962, their statement as to material facts as to which they contend there is no genuine issue (J.A. 16). Appellant's motion and appellees' cross-motion for summary judgment were heard by the Court, and on April 2, 1963, an order was entered granting appellees' cross-motion for summary judgment on Count Two and dismissing Count Two of the Complaint. Notice of Appeal was filed April 29, 1963. Count Two of the Complaint was dismissed with an express determination for entry of judgment under Rule 54(b). After hearing No. 17900,

this Court remanded so that disposition could be made of Count One. On June 2, 1964, appellant filed a motion for summary judgment on Count One with a statement of undisputed facts and a memorandum of points and authorities in support (J.A. 17). On August 14, 1964, appellees filed a cross-motion for summary judgment and opposition to appellant's motion for summary judgment. After hearing, an order was entered on November 20, 1964 denying appellant's motion for summary judgment on Counts One and Two and granting appellees' motion for summary judgment on Counts One and Two (J.A. 20). Notice of Appeal was filed December 17, 1964 (J.A. 21).

STATUTES INVOLVED

Title 4, Section 507, D.C. Code, 1951 Edition provided Retirement allowance for total disability.

Whenever any member of the police department or the fire department of the District of Columbia shall become so permanently disabled through injury received or disease contracted in the line of duty as to incapacitate him for the performance of duty, or, having served not less than twenty-five years and having reached the age of fifty-five years shall, for any cause, become so permanently disabled as to incapacitate him for the performance of duty and shall make written application therefor and said application shall be approved by the commissioners of said District, or, having reached the age of sixty years, in the discretion of the said commissioners, he shall in either event be retired from the service thereof and be entitled to receive relief from the said policemen and firemen's relief fund, District of Columbia, in an amount not to exceed 50 per centum per year of the salary received by him at the date of retirement. * * * (Sept. 1, 1916, 39 Stat. 718 ch. 433, Section 12; Feb. 17, 1923, 42 Stat. 1263, ch. 95, Section 1; Aug. 4, 1949, 63 Stat. 565, ch. 394, Section 1.)

Title 4, Section 521, D.C. Code, 1961 Edition, footnote entitled Legislative Intent:

Section 2 of act Aug. 21, 1957, provided as follows:

"It is the intent of Congress in enacting the Police-
ment and Firemen's Retirement and Disability Act
Amendments of 1957 (enacting sections 4-521 to 4-538
and repealing sections 4-504, 4-511, 4-515, 4-516, and
4-520) to give the members coming under such Act
benefits substantially similar to benefits given by the
Civil Service Retirement Act Amendments of 1956
(U.S. Code, Title 5, Section 2251 note) to officers and
employees covered by the Civil Service Retirement
Act of May 29, 1930, as amended (U.S. Code, Title 5,
Section 2251 et seq.)

Title 4, Section 526, D.C. Code, 1961 Edition, provides:

Retirement for disability not incurred in performance
of duty.

Whenever any member coming under sections 4-521
to 4-535 completes five years of police or fire service
and is found by the Commissioners to have become dis-
abled due to injury received or disease contracted other
than in the performance of duty, which disability pre-
cludes further service with his department, such mem-
ber shall be retired on an annuity computed at the rate
of 2 per centum of his basic salary at the time of his
retirement for each year or portion thereof of his serv-
ice: *Provided*, That such annuity shall not exceed 70
per centum of his basic salary at time of retirement:
Provided further, That the annuity of a member retir-
ing under this section shall be at least 40 per centum
of his basic salary at the time of retirement. (Sept. 1,
1916, ch. 433, Section 12 (f), as added Aug. 21, 1957,
71 Stat. 394, Pub. L. 85-157, Section 3.)

Title 4, Section 527, D.C. Code, 1961 Edition, provides:

Retirement for disability incurred while performing duty.

(g) Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement, nor shall it be less than $66 \frac{2}{3}$ per centum of his basic salary at the time of retirement. (Sept. 1, 1916, ch. 433, Section 12(g), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, Section 3.)

Title 4, Section 529, D.C. Code, 1961 Edition, provides:

Involuntary separation from service.

If any member is injured or contracts a disease during his first five years of service in his department which, in the judgment of the Board of Police and Fire Surgeons, disables him from performing further duty in his department, and if the Police and Firemen's Retirement and Relief Board finds that such injury or disease was not incurred in the performance of duty in his department, such member shall, upon the approval of such finding by the head of his department, and without regard for the provisions of any other law or regulation, be separated from the service. (Sept. 1, 1916, ch. 433, Section 12(i), as added Aug. 21, 1957, 71 Stat. 395, Pub. L. 85-157, Section 3.)

Title 4, Section 538, D.C. Code, 1961 Edition, provides:

Eligibility under the Federal Employees' Compensation Act.

Notwithstanding any other provision of law, no person entitled to receive any benefit under sections 4-521 to 4-535 on account of death incurred, an injury received,

or disease contracted, or an injury or disease aggravated, in the performance of duty shall be entitled because of the same death, injury, disease, or aggravation, to benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 751, and the following). (Aug. 21, 1957, 71 Stat. 400, Pub. L. 85-157, Section 7.)

STATEMENT OF POINTS

It was error for the District Court to grant summary judgment on appellees' cross-motion and to deny appellant's motion for summary judgment.

1. The Corporation Counsel for the District of Columbia has made an erroneous interpretation of Title 4, Section 527, of the District of Columbia Code (1961 Edition) which interpretation gives no effect or meaning to the word "aggravation," which word is present in the statute and must have been included by Congress for some purpose.

2. The Police and Firemen's Retirement and Relief Board, which Board says it is bound by the interpretation of the statute as given to it by the Corporation Counsel, ordered appellant retired pursuant to Title 4, Section 526 of the District of Columbia Code (1961 Edition) and if appellant's contention that the interpretation of the statute made by the Corporation Counsel was not the intention of Congress, is correct, then the Board was bound by an erroneous interpretation and appellant is entitled to retirement under Title 4, Section 527 of the Code.

3. The Court below erred in denying appellant's motion for summary judgment on Count Two of the Complaint which was an action for declaratory judgment to adjudge that Title 4, Section 527 of the District of Columbia Code (1961 Edition) includes aggravation of an injury or disease which did not originally arise in the performance of duty, and further erred in granting appellees' cross-motion for summary judgment and dismissing Count Two of the Complaint.

4. The Court below should have found as a matter of law, that since appellees admit that the condition for which appellant was ordered retired was aggravated by police duty, that appellant was entitled to be retired pursuant to Title 4, Section 527 of the District of Columbia Code (1961 Edition), and should have granted appellant's motion for summary judgment on Count One.

SUMMARY OF ARGUMENT

A decision based upon an erroneous interpretation of the law must be set aside. The finding of the Police and Firemen's Retirement and Relief Board that the condition for which appellant was ordered retired was, as a matter of fact "aggravated by police duty" required that Board to order appellant retired under Title 4, Section 527 of the D.C. Code, 1961 Edition.

The Board, however, having been instructed by appellees' agent, the Corporation Counsel for the District of Columbia, that the only aggravation to which they could give cognizance, was aggravation of injury or disease originally contracted in the performance of duty, and finding that appellant's condition was not originally contracted in the performance of duty, ordered appellant retired under Title 4, Section 526.

The construction of Title 4, Section 527, given by appellees' agent completely ignores and gives no meaning to the word "aggravation" because reading said statute, and giving it its plain meaning, it is clear that if an injury or disease is incurred or contracted in the line of duty, the member is entitled to retirement under this section no matter when it becomes disabling or whether or not there has been subsequent aggravation.

The Court below should have found as a matter of law that the Board was laboring under an improper interpretation of the Statute and should have granted appellant summary judgment on Count Two of the

Complaint, and have ordered appellees to reverse the Board and order appellant retired pursuant to 4-527 as prayed in Count One.

ARGUMENT

I

The Retirement Board Having Found That Appellant Was Disabled for Performance of Duty and That the Condition for Which Appellant Was Ordered Retired Was Aggravated by Police Duty, Should Have Ordered Appellant Retired Pursuant to Title 4, Section 527 of the District of Columbia Code (1961 Edition) Rather Than Title 4, Section 526.

Appellees' agent, the Police and Firemen's Retirement and Relief Board, made a finding after hearing, that the condition for which appellant was ordered retired effective October 31, 1961, was "aggravated by police duty," but, being unable to find any evidence that would support a conclusion that said condition "arose" from police duty, ordered appellant retired pursuant to Title 4, Section 526 of the D.C. Code, 1961 Edition, for injury or disease contracted other than in the performance of duty, at an annuity of 40% of his basic salary at the time of retirement. Appellant should have been ordered retired pursuant to Title 4, Section 527 of the D.C. Code, 1961 Edition, for disease aggravated by police duty, at an annuity of 66 2/3% of his basic salary at the time of retirement, but appellees' agent, laboring under an erroneous interpretation of Title 4, Section 527, which interpretation requires that the policeman or fireman receive an original injury or disease in the actual performance of duty, be restored to health and returned to duty and then, in the further performance of duty if that injury or disease is aggravated by further performance of duty, then he may be retired pursuant to Title 4, Section 527 (J.A. 12).

First, appellant would like to bring to the attention of the Court the case of *Crawford v. McLaughlin, et al.*, 109 U.S. App. D.C. 264, 286

F.2d 821, where the appellant received an injury while making an arrest in 1950, ordered retired in 1959, and although he had back pains in 1953 and again in 1956 and 1957, there was nothing that he had done to aggravate the condition or make it worse. According to the interpretation of the statute by which appellees' agent is bound, since Crawford was restored to duty and there was no evidence of aggravation either on or off duty, he was not eligible to retire pursuant to Title 4-527. However, it is apparent that he was retired in 1959 for an injury received in 1950 without the requirement of additional aggravation while in the performance of duty. A plain reading of Title 4-527 makes it obvious that any time a policeman or fireman is injured or contracts a disease in the performance of duty and that injury or disease permanently disables him for the performance of duty he is to be retired at 66 2/3% no matter whether it is the day after receiving the injury or contracting the disease or ten years thereafter and whether or not there has been aggravation. If Congress had intended the interpretation by which the Police and Firemen's Retirement and Relief Board is bound, then, instead of using the word "or" in the statute, they would have used the word "and."

A comparison of Title 4, Sections 526, 527 and 529 reveals that only in Section 527 is the word aggravation used. If Congress had intended the interpretation relied upon by appellees' agent, the word aggravation could have been omitted completely and would not have changed the results reached by the Retirement Board. It seems clear that Sections 526 and 529 were meant to apply to those situations where a member's injury or disease had no connection whatever with duty as a policeman or fireman and to provide for an annuity for those with five years service and no annuity for those with less than five years service. Would appellees' agent have been permitted by law to retire appellant pursuant to Section 529 if he had not had five years service, but admitting that the condition for which he was ordered retired was "aggravated by duty?"

Appellant's position is further fortified by Title 4, Section 538, which prohibits a member who receives benefits under Sections 4-521 to 4-535 from making claim under the Federal Employees' Compensation Act. If appellees' agent's interpretation is correct, there is a serious conflict since the footnote to Title 4, Section 521, entitled Legislative Intent states:

'It is the intent of Congress in enacting the Policemen and Firemen's Retirement and Disability Act Amendments of 1957 (enacting sections 4-521 to 4-538 and repealing sections 4-504, 4-511, 4-515, 4-516 and 4-520) to give the members coming under such Act benefits substantially similar to benefits given by the Civil Service Retirement Act Amendments of 1956 (U.S. Code, Title 5, Section 2251 note) to officers and employees covered by the Civil Service Retirement Act of May 29, 1930, as amended (U.S. Code, title 5, Section 2251, et seq.)

If a policeman or fireman with less than five years of service is retired pursuant to Title 4-529, for an injury or disease not received or contracted in the line of duty, but a condition that was admittedly aggravated by duty, since he would receive no benefits under Sections 4-521 to 4-535, would he be eligible to make claim because of a disease aggravated in the performance of duty under the Federal Employees' Compensation Act, or was it the intention of Congress to have all service connected injuries or diseases, whether service connected by reason of an incident occurring while in the performance of duty or by reason of aggravation arising from the employment, compensated under the Policemen and Firemen's Retirement and Disability Act Amendments of 1957? In view of the Legislative Intent it certainly could not have been the intention of Congress to completely outlaw such a claim admittedly service connected by aggravation of a preexisting but unrecognized condition.

In the Court below appellees argued that prior to the enactment of the 1957 Amendments members were not entitled to benefits based on disability except where the disability was incurred in the performance

of duty. This makes reference to Title 4-507 of the D.C. Code, 1951 Edition, which states in part:

"Whenever any member of the police department or the fire department of the District of Columbia shall become so permanently disabled through injury or disease contracted (emphasis added) in the line of duty as to incapacitate him for the performance of duty * * * he shall * * * be entitled to receive relief * * * in an amount not to exceed 50 per centum per year * * *."

Where, as here, appellant's disability is admittedly aggravated by duty as a policeman, was it not contracted in the line of duty? Appellees state that the prior statute, Title 4-507, produced inequities and hardship, but since appellant is receiving 40 per centum per annum under the law as appellees interpret it, and would have received 50% under the prior law, it is difficult to see how any deficiency was overcome as claimed. From the Legislative Intent it appears that Congress intended some improvement by adding 16 2/3% to a retiree's annuity rather than deducting 10%. Appellees apparently tried to give the impression in the Court below that appellant would have been entitled to no retirement under the prior law, stating that under the prior Act no retirement was possible for a policeman or fireman permanently injured outside (emphasis added) the line of duty unless he had twenty-five years of service. Since appellant's disability was in fact aggravated by police duty could it have been held under the prior law that it was not contracted in the line of duty?

It is submitted that appellees' agent, the Retirement and Relief Board, laboring under an erroneous interpretation of the law, was in error in ordering appellant retired under Title 4-526 rather than Title 4-527, and appellant calls upon this Court to correct the error.

II

The Court Below Should Have Found That the Interpretation of Title 4, Section 527, Made by the Corporation Counsel, and Relied Upon by Appellees and the Retirement Board, Was Erroneous, and Should Have Granted Appellant's Motion for Summary Judgment.

Appellant called upon the Court below to adjudge that Title 4-527 of the D.C. Code (1961 Edition) includes aggravation of an injury or disease which did not originally arise in the performance of duty and that since it is admitted that the plaintiff's condition for which he was ordered retired was aggravated by police duty, that plaintiff is entitled to be retired pursuant to Title 4-527, rather than Title 4-526. The Court, on motion and cross-motion for summary judgment on this issue, ruled that after consideration of the motions, exhibits and memoranda of points and authorities, after oral argument, that defendant's motion for summary judgment be granted and that Count Two be dismissed. The Court below, by its adjudication, compounded the error which appellant claims is being made by appellees' agent. The Court below construed the statute so as to require an injury or disease to be received or contracted in the line of duty and gave no significance to the portion of the statute where twice the word aggravation is used. "There is a presumption against a construction which will render a statute ineffective or inefficient or would cause grave public injury or even inconvenience," *National Homeopathic Association v. Britton*, 79 U.S. App. D.C. 309, 147 F.2d 561, cert. den., 65 S. Ct. 1185, 325 U.S. 857, 89 L.Ed. 1977. The Court should have applied the maxim "*Ut res magis valeat quam pereat*," and given the word aggravation a meaning, rather than, as does the Corporation Counsel's opinion (J.A.) give no effect at all to the word aggravation.

"Before a Court accepts a course of depriving disputed words in a statute of any real significance, it is entitled to seek out the purpose of

the legislation through such extrinsic aids as may be available," *Myers v. Hollister*, 96 U.S. App. D.C. 388, 226 F.2d 346, cert. den., 76 S.Ct. 474, 350 U.S. 987, 100 L.Ed. 854, Rehearing denied, 76 S.Ct. 786, 351 U.S. 934, 100 L.Ed. 1462.

Appellant says, that had the Court below given the word aggravation a meaning, and as stated in *Crawford v. McLaughlin, et al., supra*, citing *Bradley v. City of Los Angeles*, 55 Cal. App. 2d 592, 131 P.2d 391 (1942), had the Court below given consideration to the humane purpose of retirement laws, it should have been adjudged that appellant is entitled to retirement pursuant to Title 4-527.

In a somewhat similar situation, the lower Court in the case of *Garratt v. City of Philadelphia*, 387 Pa. 442, 127 A.2d 738 (1956), sustained objections in the nature of a demurrer and dismissed a complaint in mandamus to compel the Award Committee to award \$10,000.00 to the widow of a fireman killed while fighting a fire, agreeing with the Award Committee that a City Ordinance providing for the award required (1) the death which occurred must have occurred while fighting a fire, and (2) must have resulted from an heroic deed which involved a special hazard or risk. The pertinent section of the Ordinance states:

"Section 1. The Council hereby provides that the sum of ten thousand (10,000) dollars shall be paid to the surviving widow or dependent children or dependent parents of every fireman, policeman, or park policeman who is killed in the course of responding to an alarm, fighting a fire, apprehending a criminal, or in the course of performing an heroic deed which involves a special hazard or risk."

The Supreme Court of Pennsylvania, in reversing, stated:

"The core of the City's interpretation which was adopted by the Court below, is that the death must have resulted in every case in the performance of an heroic deed. This is contrary to the clear and specific language of the Ordinance. Section 1 * * * clearly and explicitly

provides that \$10,000.00 shall be paid to a surviving widow of a fireman who is killed in the course of fighting a fire, or in the course of performing an heroic deed which involves a special hazard or risk. 'Or' in its ordinary usage and meaning clearly and undoubtedly means 'or'. 'Or' can only be construed to mean 'and' when to give the word 'or' its ordinary meaning would be to produce a result that is absurd or impossible of execution or highly unreasonable or would manifestly change or nullify the intention of the legislative body."

Appellant says that the Court below, in affirming the interpretation of 4-527 as set out by the Corporation Counsel, has done the same thing as the lower Court in *Garratt v. City of Philadelphia, supra*, and has permitted the substitution of the word "and" where the statute states "or."

III

The Court Below Should Have Found as a Matter of Fact That the Condition for Which Appellant Was Ordered Retired Was Aggravated by Police Duty and Should Have Granted Appellant's Motion for Summary Judgment on Count One.

At the hearing before the Police and Firemen's Retirement and Relief Board, Dr. Hyman D. Shapiro, psychiatrist for the Board of Police and Fire Surgeons and Dr. Leslie E. Sanders, former psychiatrist for the Board of Police and Fire Surgeons, now in private practice, testified. Dr. Shapiro, on direct examination stated, "My recommendation was that he be retired; I felt that he could not perform any further useful service in the Police Department, and I felt that the disability was not the result of or aggravated by police duty because of the basic inherent personality condition present." On cross-examination Dr. Shapiro was asked if after hearing all the other testimony whether it was still his opinion that Private Zangardi's police duty did not aggra-

vate his condition or precipitate it in any way. His answer was that this was still his opinion, and explained that the man had a basic abnormal emotional personality; that Dr. Shapiro had not known that Zangardi had been to the Police psychiatrist after having been removed from his job as patrol system signal officer and that he had not had access to Dr. Sanders' records. Dr. Shapiro was asked if he was saying that Zangardi would have had this same reaction if the difficulty with being taken off the job in the station had not arisen. His answer was, "No, I haven't said that at all. I said that a normal personality would not react the way he did to these stress factors that he alleges, whereas a person with his type of personality would react that way" (emphasis added). Dr. Shapiro was then asked, "Well, aren't you saying that this is an aggravation? His duty aggravated —" Dr. Shapiro answered, "Well, I would say this. That if there were factors arising out of duty which were unjust and which caused him to react this way, it was an aggravating factor. But I'm not convinced that they were unjust without knowing the facts." The questioning of Dr. Shapiro continued, "Well, the fact that they did — he was — his record does show he was relieved from duty —." Dr. Shapiro replied, "Well, he may have been relieved from duty for cause; I don't know." Dr. Shapiro was then asked, "Well, this doesn't indicate, but if he was removed for cause and not told why, and believed it was unjust himself, whether its true or not — would that —." In response Dr. Shapiro said, "I have already stated that if the man felt that he was unjustly treated, that would aggravate his condition. But I don't know just what the circumstances were, that's all I testified to; I'm not disagreeing with you."

Dr. Leslie E. Sanders testified that he had examined appellant four or five times in 1959 at the Police and Fire Clinic, that appellant was having stomach trouble which was secondary to an emotional condition and was anxious and depressed at that time. The history that he got from the patient was that sometime before he saw him in 1959 Zangardi had been relieved of his duty as a patrol signal system operator at #6

Precinct; this had come about unexpectedly; that he liked being in the station; that he had been told that he was being relieved of this position because his reports and his attitude had gotten bad; that he couldn't understand why; this because there had been no complaint about his work prior to being relieved of duty. He was unhappy and bitter and felt he was being unjustly criticized. Dr. Sanders diagnosed his difficulty in 1959 as an anxiety reaction. He was asked whether he had an opinion with reasonable medical certainty as to whether Zangardi's duty with the Police Department caused or aggravated the condition diagnosed as anxiety reaction. Dr. Sanders' answer was:

"Yes, I think it is related; whether to say it is caused or aggravated, I'm not quite so sure. I would say that it was aggravated. I think that in any other kind of work, work where a man is not confronted with the same type of violence and the same type of dangers, that Zangardi would not be having the trouble that he has today. I think in that respect it is directly related to the performance of this kind of duty. I think whether or not his work and these factors caused his illness, I think you could argue that case because from his past record I don't get any history of anxiety reactions or neurotic problem; he describes his work in the service, in which he was in a responsible position, in which he functioned well, and his past performance — all that I get, anyway — does not indicate a neurotic sort of process, which I think he's suffering from now. Apparently — I don't think there's any indication of it during the first ten years of his duty on the Police Department, I think from 1949 to '59 he functioned effectively — so certainly I think it's related to his work."

Appellant, pursuing his administrative remedy after the Retirement Board ordered him retired for disability not incurred in the line of duty, noted an appeal to appellees. Mr. Henry Hubbard, Personnel Officer, D.C., submitted to appellees a statement of the facts developed at the

hearing before the Retirement Board, stating in part, "The Board after considering all the testimony in this case was unable to find any evidence that would support a conclusion that Private Zangardi's condition arose from police duty. There was ample reason to find that police duty aggravated his condition". In addition, appellees' answer to the Complaint filed herein admits the allegation of paragraph four which sets out Mr. Hubbard's statement and again admits the allegation contained in the first sentence of paragraph eleven of the Complaint which sets out the admission that police duty aggravated appellant's condition.

From the medical testimony which was submitted to the Court below and the admission made by appellees and their agent, the Court had no alternative but to find as a matter of fact that the condition for which appellant was retired was aggravated by duty as a police officer. If the Court found otherwise, he was in error. If the Court below agreed that appellant's condition was aggravated by police duty, then the only other premise upon which he could have denied appellant's motion and granted appellees' motion for summary judgment is a finding that the statute involved does not include aggravation and the argument on that issue has been fully set out in sections I and II, of the Argument, supra.

CONCLUSION

Since it is obvious that Congress intended to give benefits greater than those in the previous retirement act and not reduce a policeman's annuity, further, that there is no question that appellant's disability is service connected, it being admitted that the condition for which he was ordered retired was aggravated by police duty, it is clear that the Retirement Board was acting under an erroneous interpretation of the law and that the granting of appellees' motion for summary judgment and the denial of appellant's motion for summary judgment in the Court below was error.

It is respectfully submitted therefore that the judgment of the Court below be reversed with instructions to enter summary judgment for the relief prayed in the Complaint filed herein.

Respectfully submitted,

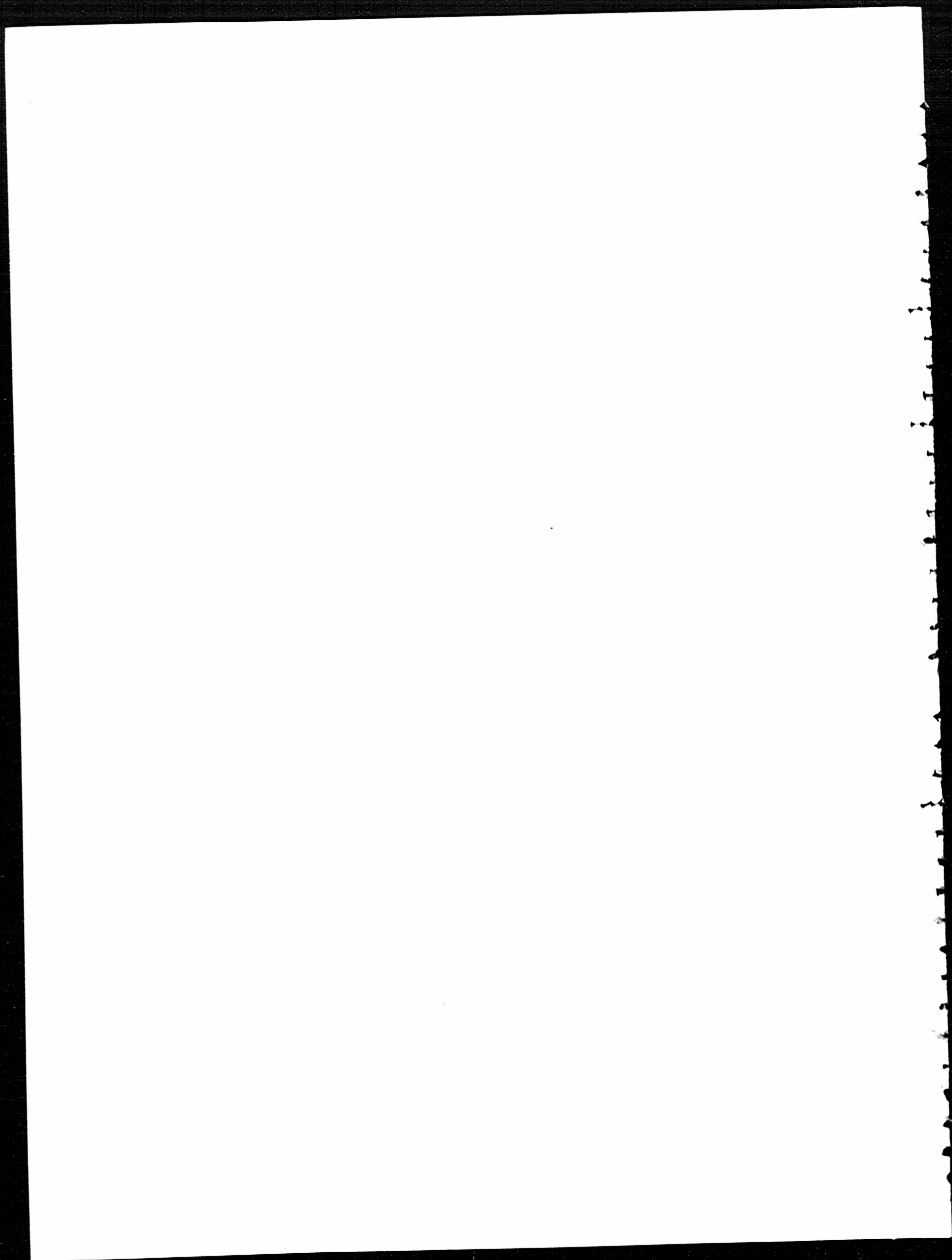
NORMAN H. HELLER

711-14th Street, N. W.
Washington, D. C. 20005

Attorney for Appellant

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JOINT APPENDIX

[Filed March 24, 1962]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Frederick C. Zangardi
4705 Wissahican Avenue
Rockville, Maryland
Plaintiff

v.

Walter N. Tobriner, President
Frederick J. Clarke, Member
John B. Duncan, Member
Board of Commissioners of
The District of Columbia
District Building
Washington, D.C.

Defendants

Civil Action No. 968-62

COMPLAINT FOR MANDATORY INJUNCTION
DIRECTING RETIREMENT OF POLICE OFFICER
FOR DISABILITY INCURRED OR AGGRAVATED BY
POLICE DUTY AND DIRECTING REVERSAL OF THE
ORDER RETIRING POLICE OFFICER FOR DISABILITY
NOT INCURRED IN PERFORMANCE OF DUTY, AND FOR
DECLARATORY JUDGMENT

1. This Court has jurisdiction under Title 11, 306 of the District of Columbia Code and Title 28, Section 2201 of the United States Code.

COUNT ONE
(MANDATORY INJUNCTION)

2. Plaintiff was appointed a member of the Metropolitan Police Department on November 28, 1949, and served continuously until June 6, 1961, when he was ordered by the Board of Police and Fire Surgeons to appear before the Police and Firemen's Retirement and Relief Board of the District of Columbia for consideration of retirement.

3. On, to wit, August 3, 1961 and October 3, 1961, plaintiff appeared before the Police and Firemen's Retirement and Relief Board as ordered, testimony was taken, and on, to wit, October 16, 1961, said Board ordered plaintiff retired effective October 31, 1961, for injury or disease received or contracted other than in the performance of duty as a policeman.

Plaintiff was ordered retired for a condition diagnosed as "psychophysiological reaction, multiple" and plaintiff says that the evidence did not permit a finding that would allow retirement for injury or disease received or contracted other than in the performance of duty and that therefore the Order issued by the Police and Firemen's Retirement and Relief Board was arbitrary, capricious, not in conformity with the evidence, in violation of law and in derogation of plaintiff's rights. Plaintiff alleges that said Board acting as agents of the defendants herein, knew or should have known that said Order was not in conformity with the evidence and therefore unlawful.

4. On, to wit, October 20, 1961, plaintiff, through counsel, noted an appeal to the defendants, pursuant to defendants' Order Number 60-2394. On, to wit, December 20, 1961, pursuant to the foregoing Order, Mr. Henry F. Hubbard, Personnel Officer, D.C., defendants' agent, submitted to the defendants a statement of the facts developed by the Police and Firemen's Retirement and Relief Board concerning the retirement of plaintiff at the hearings in which statement of facts it was set out that the Board was unable to find any evidence that would support a conclusion that plaintiff's condition arose from police duty, but added that there was ample reason to find that police duty aggravated plaintiff's condition. Plaintiff alleges that there was evidence that would support a conclusion that his condition arose from police duty, but, if as admitted by defendants' agent "police duty aggravated plaintiff's condition, then plaintiff should have been ordered retired pursuant to Title 4, Section 527 of the District of Columbia Code (1961 Edition) for disability incurred while performing duty.

5. Hearing of the appeal before the defendants was held on January 25, 1962, and plaintiff, through counsel, pointed out to the defendants that the Police and Firemen's Retirement and Relief Board were making their decisions on the questions of retirement using an improper standard and that if as admitted by defendants' agent in this case "there was ample reason to find that police duty aggravated plaintiff's condition", then the Order retiring plaintiff under Title 4,

Section 526 was improper and should be reversed. On January 29, 1962, defendants sustained the Order of the Police and Firemen's Retirement and Relief Board, and plaintiff alleges that the decision of defendants sustaining the aforesaid Order was arbitrary, capricious, unsupported by facts, based upon an improper interpretation of the law and in derogation of plaintiff's rights and that defendants knew or should have known that their decision was unlawful.

6. Plaintiff has exhausted his administrative remedy and has no other remedy available other than that requested herein.

WHEREFORE, plaintiff prays:

1. That the Court issue a Mandatory Injunction directing the defendants to reverse the Order of the Police and Firemen's Retirement and Relief Board dated October 16, 1961, ordering plaintiff retired for disability not incurred in the line of duty and directing defendants to order plaintiff retired for disability incurred while performing duty effective October 31, 1961, and further directing the defendants to pay to plaintiff in a lump sum the difference between the 40% retirement and 66 2/3% from November 1, 1961 to and including the date plaintiff's retirement is increased to 66 2/3% as required by Title 4, Section 527 of the D.C. Code.

2. That the Court grant such other and further relief as the nature of the case may require.

3. That defendants be required to pay all costs of this action.

COUNT TWO
(DECLARATORY JUDGMENT)

7. Paragraph 1 is incorporated and adopted herein.

8. This is an action for declaratory judgment pursuant to 28 USC Section 2201, for the purpose of determining a question of actual controversy between the parties, as hereinafter more fully appears.

9. Paragraphs 2, 3, 4, 5 and 6 are adopted and incorporated herein.

10. Plaintiff says that the defendants and their agents are misinterpreting Sections 526 and 527 of Title 4 of the District of Columbia Code (1961 Edition) and that as the result of said misinterpretation he is being deprived of substantial sums of money, namely, the difference between 40% and 66 2/3% of his base salary as a police officer as of and since November 1, 1961.

11. As set out in paragraph 4 above, it was admitted by defendants' agent that there was ample evidence that policy duty aggravated plaintiff's condition. Plaintiff says that this requires retirement under Title 4-527, but defendants' agent has interpreted said section of the Code as follows:

"Whenever the Commissioners or their designated agents make a finding based upon substantial evidence that the member was injured or contracted a disease in the performance of duty, that such injury or disease was not sufficient to permanently disable him for the performance of duty, that after being restored to health he was returned to duty and thereafter in the further performance of duty the injury or disease originally contracted in the performance of duty was aggravated by such further performance of duty so as at that time to permanently disable him for further performance of duty, then the Commissioners or their designated agents may, on the basis of the above findings, retire such member pursuant to authority contained in 4-527".

Title 4-527 actually states as follows:

"Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disable him for the performance of duty, he shall upon retirement for such disability * * *".

The construction of the foregoing statute given by the defendants completely ignores and gives no meaning to the word "aggravation", because if the injury or disease must originate in the performance of duty then a member would be entitled to retire for the original injury

when it disabled him for performance of duty no matter when it disabled him and there would be no need for the use of the word aggravation in the statute.

12. The Police and Firemen's Retirement and Relief Board, which originated the Order retiring plaintiff, says they are bound by the interpretation given the foregoing statute, and that even though plaintiff's retirement was due to disability which was aggravated by policy duty, he must be retired under Title 4-526, since the condition did not originate in the performance of duty, and it is clear that the erroneous interpretation has caused grievous harm to plaintiff.

WHEREFORE, plaintiff demands that the Court adjudge:

That Title 4-527 of the District of Columbia Code (1961 Edition) includes aggravation of an injury or disease which did not originally arise in the performance of duty and that since it is admitted that plaintiff's condition for which he was ordered retired was aggravated by policy duty, that plaintiff is entitled to be retired pursuant to Title 4-527, rather than Title 4-526.

/s/ Frederick C. Zangardi

STATE OF MARYLAND)
MONTGOMERY COUNTY) SS:

Frederick C. Zangardi, being first duly sworn, deposes and says that he is the plaintiff in the above case, that he has read the Complaint and that the facts and statements therein alleged are true.

Subscribed and sworn to before me this 24th day of March, 1962.

/s/

Notary Public

(SEAL)

My Commission Expires

/s/ Norman H. Heller
Attorney for Plaintiff

* * *

[Filed April 16, 1962]

ANSWER OF DEFENDANTS

First Defense

The complaint for mandatory injunction and declaratory judgment fails to state a claim against the defendants upon which relief can be granted.

Second Defense

1. The defendants admit the allegations contained in paragraph numbered 1 of the complaint.

COUNT ONE

2. The defendants admit the allegations contained in paragraph numbered 2 of Count One of the complaint.

3. The defendants admit the allegations contained in the first complete sentence of paragraph numbered 3 of Count One of the complaint and deny the allegations contained in the remaining two sentences of said paragraph.

4. In answer to paragraph numbered 4 of Count One of the complaint, the defendants admit the allegations contained in the first sentence thereof and deny the allegations contained in the last sentence of said paragraph.

5. The defendants deny that their decision sustaining the order of the Police and Firemen's Retirement and Relief Board is arbitrary, capricious and unsupported by the facts, deny that it is based upon an improper interpretation of the law, deny that it is in derogation of plaintiff's rights, and deny that it is unlawful. The defendants admit the remaining allegations contained in paragraph numbered 5 of Count One of the complaint.

6. The defendants admit that plaintiff has exhausted his administrative remedy.

COUNT TWO

7. In answer to paragraph numbered 7 of Count Two of the complaint, the defendants adopt and by reference incorporate herein their answer to paragraph numbered 1 of the complaint.

8. The defendants admit the allegations contained in paragraph numbered 8 of Count Two of the complaint.

9. In answer to paragraph numbered 9 of Count Two of the complaint, the defendants adopt and by reference incorporate herein their answer to paragraphs numbered 2, 3, 4, 5 and 6 of Count One of the complaint.

10. The defendants deny the allegations contained in paragraph numbered 10 of Count Two of the complaint.

11. The defendants admit the allegation contained in the first complete sentence of paragraph numbered 11 of Count Two of the complaint and deny all remaining conclusions, argument and, if any, allegations contained in said paragraph.

12. The defendants deny that the Police and Firemen's Retirement and Relief Board erroneously interpreted the law and deny that its interpretation of the law has caused plaintiff grievous harm. The defendants admit that the Police and Firemen's Retirement and Relief Board is bound by the interpretation of the statute set out in paragraph numbered 11 of Count Two of the complaint.

CHESTER H. GRAY
Corporation Counsel, D.C.

JOHN A. EARNEST
Assistant Corporation Counsel, D.C.

GEORGE H. CLARK
Assistant Corporation Counsel, D.C.

Attorneys for Defendants

* * *

[Certificate of Service]

[Filed July 2, 1962]

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff moves the Court for an Order granting Summary Judgment in the above case and for reasons therefore states:

1. That there is no dispute as to material facts insofar as Count Two of the Complaint, which Count is a Complaint for Declaratory Judgment under Title 28, Section 2201 of the United States Code, for the purpose of determining a question of actual controversy between the parties.

2. That the issue before the Court is the interpretation of Title 4, Section 527 of the District of Columbia Code (1961 Edition), which provision is set out in the Statement of Undisputed Facts attached hereto.

3. That if, as plaintiff contends, defendants are misinterpreting said Code provision, then plaintiff has been and will in the future be grievously harmed unless the defendants are instructed by the Court to correct their erroneous interpretation.

4. That plaintiff is a person whose rights are affected by the foregoing Code provision and is requesting the Court for a determination of a question of construction of said Code provision and a declaration of his rights thereunder.

5. That a declaration of plaintiff's rights will settle and afford relief from uncertainty and insecurity with respect to the rights and status of all persons coming under said Code provision.

6. For such other and further reasons as will be brought to the attention of the Court at the hearing of this motion.

Norman H. Heller
Attorney for Plaintiff

[Certificate of Service]

PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS

Until October 31, 1961, plaintiff was among that class of person defined in Title 4, Section 521(1) of the District of Columbia Code (1961 Edition) as a "member" and having completed more than five years of police service, upon being found disabled for the performance of duty, was entitled to be retired pursuant to either Title 4, Section 526 or Title 4, Section 527, which Code provisions are set out as follows:

Title 4, Section 526 Retirement for disability not incurred in performance of duty.

"Whenever any member coming under sections 4-521 to 4-535 completes five years of police or fire service and is found by the Commissioners to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service: Provided, That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement: Provided further, That the annuity of a member retiring under this section shall be at least 40 per centum of his basic salary at the time of retirement."

Title 4, Section 527 Retirement for disability incurred while performing duty.

"Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability receive an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service: Provided, That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement

nor shall it be less than 66 2/3 per centum of his basic salary at the time of retirement".

In July, 1961, plaintiff was ordered to appear before the Police and Firemen's Retirement and Relief Board and hearings were held on August 3, 1961 and October 3, 1961, testimony was taken, and on October 16, 1961, plaintiff was ordered retired effective October 31, 1961, for injury or disease received or contracted other than in the performance of duty under Title 4, Section 526, at an annuity of 40 per centum of his basic salary. Plaintiff duly noted an appeal from the decision of the Police and Firemen's Retirement and Relief Board and pursuant to the provisions of Commissioners' Order No. 60-2394 dated November 22, 1960, Mr. Henry F. Hubbard, Personnel Officer of the District of Columbia, as defendants' agent, submitted to the Commissioners a statement relative to the facts developed by the Police and Firemen's Retirement and Relief Board concerning the case of plaintiff. Said statement, dated December 20, 1961, sets out on page 3 as follows:

"Dr. Leslie Sanders testified to the effect that while serving as psychiatrist on the Board of Police and Fire Surgeons he had diagnosed Private Zangardi's problem as an anxiety reaction. This, he attributed to Zangardi's repressed or suppressed feelings of anger at being relieved of a coveted assignment. With these feelings Private Zangardi was apprehensive about doing patrol duty for fear of how he would conduct himself.

In response to a specific question Dr. Sanders was not sure that police duty caused Private Zangardi's condition. He was certain, however, that police duty aggravated his condition."

The statement on page 4 states:

"The Board after considering all the testimony in this case was unable to find any evidence that would support a conclusion that Private Zangardi's condition arose from police duty. There was ample reason to find that police duty aggravated his condition."

Paragraph 11 in Count Two of plaintiff's complaint filed herein, alleges that the defendants' agent has interpreted Title 4, Section 527 as follows:

"Whenever the Commissioners or their designated agents make a finding based upon substantial evidence that the member was injured or contracted a disease in the performance of duty, that such injury or disease was not sufficient to permanently disable him for the performance of duty, that after being restored to health he was returned to duty and thereafter in the further performance of duty the injury or disease originally contracted in the performance of duty was aggravated by such further performance of duty so as at that time to permanently disable him for further performance of duty, then the Commissioners or their designated agents may, on the basis of the above findings, retire such member pursuant to authority contained in 4-527."

Defendants' answer to the complaint, paragraph 12 of Count Two, states "The defendants admit that the Police and Firemen's Retirement and Relief Board is bound by the interpretation of the statute set out in paragraph numbered 11 of Count Two of the Complaint."

Hearing in the matter of the appeal from the decision of the Police and Firemen's Retirement and Relief Board was held before the defendants on January 25, 1962, at which time, plaintiff, through counsel, in support of reversal, submitted a four page memorandum to the defendants, which memorandum was made part of the record on appeal and is attached hereto as "Exhibit A".

On January 29, 1962, defendants affirmed the Order appealed from.

Norman H. Heller
Attorney for Plaintiff

[Certificate of Service]

EXHIBIT A

MEMORANDUM -- TITLE 4-526, 4-527 D.C. CODE

ISSUE: Has the Board of D.C. Commissioners adopted an interpretation of the statutes which manifestly changes or nullifies the intention of Congress?

LEGISLATIVE INTENT

The footnote to 4-521 sets out "It is the intent of Congress in enacting the Policemen and Firemen's Retirement and Disability Act Amendments of 1957 (enacting sections 4-521 to 4-538 and repealing sections 4-504, 4-511, 4-515, 4-516 and 4-520) to give the members coming under such Act benefits substantially similar to benefits given by the Civil Service Retirement Act Amendments of 1956 (U.S. Code, title 5, Section 2251 note) to officers and employees covered by the Civil Service Retirement Act of May 29, 1930, as amended (U.S. Code, title 5, Section 2251, et seq.).

CORPORATION COUNSEL'S OPINION

The following is an excerpt from a previous hearing:

"Whenever the Commission or its designated agent makes a finding based upon substantial evidence that a member has been injured or has contracted a disease in the performance of duty which permanently disables him from the performance of duty, he may be retired pursuant to authority contained in Subsection G."

"Whenever the Commissioners or their designated agents make a finding based upon substantial evidence that the member was injured or contracted a disease in the performance of duty, that such injury or disease was not sufficient to permanently disable him for the performance of duty, that after being restored to health he was returned to duty and thereafter in the further performance of duty the injury or disease originally contracted in the performance of duty was aggravated by such further performance of duty so as at that time to permanently disable him for further performance of duty, then Commissioners or their designated agents may, on the basis of the above findings, retire such member pursuant to authority contained in Subsection G."

EXHIBIT A (Con't.)SUBSECTION G (4-527)

Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability receive an annuity * * * nor shall it be less than 66 2/3 per centum.

"OR"

The word "or" can only be construed to mean "and" when to give the word "or" its ordinary meaning would be to produce a result that is absurd or impossible of execution or highly unreasonable or would manifestly change or nullify the intention of the legislative body.

Garratt v. City of Philadelphia, 127 A. 2d 738 (Sup. Ct. of Pa. Dec. 29, 1956).

QUAERE

Is the interpretation as set forth in the Corporation Counsel's Opinion giving effect to that portion of the statute that reads "or such injury or disease is aggravated by such duty at any time after appointment"? It is obvious that if the intent of Congress was as is set out by the "Opinion" then there would be no purpose in this portion of the statute. The words are merely surplusage, because if an injury received in line of duty is sustained the member is entitled to be retired under 4-527 when and if that injury incapacitates him for further duty whether or not it has been aggravated. Since the words have been included in the statute, their plain meaning must be applied, and not disregarded or given a strained interpretation to fit the whim or desire of the person making the interpretation. "When the words of the law are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." Garratt v. City of Philadelphia, supra.

The position that the Corporation Counsel is not correct in his interpretation is further fortified by a reading of 4-538 entitled Eligibility under the Federal Employees' Compensation Act, as follows:

EXHIBIT A (Con't.)

Notwithstanding any other provision of law, no person entitled to receive any benefit under Sections 4-521 to 4-535 on account of death incurred, an injury received, or disease contracted, or an injury or disease aggravated (emphasis added), in the performance of duty shall be entitled, because of the same death, injury, disease, or aggravation, to benefits under the Federal Employees' Compensation Act.

The use of the word "or" clearly is meant to set out the various conditions under which members could not make claim under the F.E.C.A. If the injury or disease aggravated in the performance of duty had to be originally received or contracted in performance of duty these words are again surplusage. Why would Congress insist upon adding unnecessary words?

WHERE "AGGRAVATION" HAS BEEN OMMITTED.

To climax the argument 4-529 sets out the conditions upon which a member can be involuntarily separated from service.

If any member is injured or contracts a disease during his first five years of service in his department which, in the judgment of the Board of Police and Fire Surgeons, disables him from performing further duty in his department, and, if the Police and Firemen's Retirement and Relief Board finds that such injury or disease was not incurred in the performance of duty in his department such member shall * * * be separated from the service.

Primarily, note that when Congress means to set out two conditions that must operate it uses the word "and" not the word "or", but more important, can a member be involuntarily separated under this provision if during his first five years he is found to be disabled from performing duty by an injury or disease not incurred in the performance of duty but disabled by an injury or disease aggravated by police duty. If the wording of the code provision gave two conditions that must be met can a third be added by interpretation? Would not have Congress included aggravation within the first five years if it were meant to exclude such members from a pension?

EXHIBIT A (Con't.)4-526

In order to retire a member under this section he must be found to have become disabled due to injury or disease contracted other than in the performance of duty. Can a member whose injury or disease is aggravated by such duty be found to be disabled due to injury or disease contracted other than in the performance of duty? What the Corporation Counsel is saying completely rewrites 4-526 to read * * * and is found by the Commissioners to have become disabled due to injury received or disease contracted other than in the performance of duty or an injury or disease contracted other than in the performance of duty and later aggravated by policy duty. If Congress meant this they would have said just that.

[Filed August 1, 1962]

**MOTION OF DEFENDANTS WALTER N. TOBRINER, JOHN B. DUNCAN
AND BRIGADIER GENERAL F.J. CLARKE FOR SUMMARY JUDGMENT
ON COUNT II OF THE COMPLAINT**

The defendants, Walter N. Tobriner, John B. Duncan and Brigadier General F.J. Clarke move the Court to grant them summary judgment on Count II of the complaint on the ground that the complaint, together with the answer, the statements of material facts as to which there is no genuine issue, plaintiff's Exhibit "A" and the memorandum of points and authorities in support of this motion show that there is no genuine issue as to any material fact and that defendants are entitled to a judgment as a matter of law on Count II of the complaint.

/s/ Chester H. Gray
Corporation Counsel, D.C.

/s/ John A. Earnest
Assistant Corporation Counsel, D.C.

/s/ George H. Clark
Assistant Corporation Counsel, D.C.

Attorneys for Defendants

* * *

[Certificate of Service]

[Filed August 2, 1962]

**DEFENDANTS' STATEMENT OF MATERIAL FACTS AS TO
WHICH THEY CONTEND THERE IS NO GENUINE ISSUE**

The defendants contend there is no genuine issue of fact necessary to be litigated with respect to Count II of the Complaint. The essential facts necessary for a determination of the question of law presented in Count II of the complaint are undisputed and are as follows:

1. On and before October 31, 1961, plaintiff was a member of the Metropolitan Police Department, D.C.

2. Prior to October 31, 1961, plaintiff had completed more than five years of police service.

3. The Police and Firemen's Retirement and Relief Board unanimously voted to retire plaintiff for disability arising other than from the performance of duty under Section 4-526, D.C. Code, 1961 Edition.

4. The Police and Firemen's Retirement and Relief Board found that there was no evidence which would support a conclusion that plaintiff's condition arose from police duty.

5. The Police and Firemen's Retirement and Relief Board found that police duty aggravated plaintiff's condition.

6. On January 29, 1962, defendants affirmed the order of the Police and Firemen's Retirement and Relief Board.

/s/ Chester H. Gray
Corporation Counsel, D.C.

/s/ John A. Earnest
Assistant Corporation Counsel, D.C.

/s/ George H. Clark
Assistant Corporation Counsel, D.C.

Attorneys for Defendants

[Certificate of Service]

[Filed 6/2/64]

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff moves the Court for an Order granting Summary Judgment in the above case and for reasons therefore states:

1. That there is no genuine dispute as to material facts.
2. That on March 5, 1964, the United States Court of Appeals for the District of Columbia Circuit remanded this case for further proceedings, this Court having granted Summary Judgment on Count Two, which count had asked for declaratory judgment to interpret Title 4, Section 527 of the District of Columbia Code (1961 Edition).
3. That in spite of the statement of the Court of Appeals that "The District Court denied the defendants' motion for summary judgment on Count One," the record will reveal that no action has been requested or taken by the Court insofar as Count One, the only motion and cross-motion was for summary judgment on Count Two.
4. That a trial of the issues herein will produce no different or additional facts, the only issue being one of law, based upon the facts that have already been adduced at the hearings before the Police and Firemen's Retirement and Relief Board and before the defendants on the appeal from the decision of said Board.
5. That Count One herein asks for mandatory injunction requiring defendants to order plaintiff retired pursuant to Title 4, Section 527 of the District of Columbia Code (1961 Edition) rather than Section 526, on the ground that there was no evidence on injury or disease received or contracted other than in the performance of police duty and that there was some evidence that plaintiff's condition arose as the result of police duty and an admission by defendants that plaintiff's condition was aggravated by police duty.
6. For such other and further reasons as will be advanced at the hearing of this motion.

Wherefore plaintiff prays the Court for an order granting summary judgment on Count One of the Complaint herein directing the defendants to reverse the Order of the Police and Firemen's Retirement and Relief Board as prayed in Count One of the Complaint.

/s/ Norman H. Heller
Attorney for Plaintiff

[Filed 8/14/64]

DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

Defendants hereby adopt the memorandum of points and authorities in support of their motion for summary judgment as their opposition to the plaintiff's motion for summary judgment.

It is respectfully submitted that the action of the defendants sustaining the action of the Police and Firemen's Retirement and Relief Board in retiring the plaintiff for disability not incurred in the performance of duty is supported by substantial evidence.

Accordingly, defendants urge the Court to deny plaintiff's motion for summary judgment and to grant defendants' motion for summary judgment.

/s/ Chester H. Gray
Corporation Counsel, D. C.

/s/ John A. Earnest
Assistant Corporation Counsel, D.C.

/s/ William F. Patten
Assistant Corporation Counsel, D.C.
Attorneys for the Defendants

[Certificate of Service
14 August 1964]

[Filed 8/14/64]

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The defendants Walter N. Tobriner, John B. Duncan, and Charles M. Duke, individual members of the Board of Commissioners for the District of Columbia, move the Court for summary judgment in their favor, on the grounds that a consideration of the pleadings and other matters filed in this cause demonstrate that there is no genuine issue as to any material fact, that there is substantial evidence in the administrative record to support the action taken by the defendants, and that, therefore, defendants are entitled to judgment as a matter of law. The defendants, by reference incorporate herein and ask to have read as a part hereof, the record of the administrative proceedings relating to the disability retirement of the plaintiff, attached hereto as defendants' exhibits A through S, as well as Exhibit A attached to plaintiff's original motion for summary judgment.

/s/ Chester H. Gray
Corporation Counsel, D. C.

/s/ John A. Earnest
Assistant Corporation Counsel, D.C.

[Certificate of Service
14 August 1964]

[Filed 8/14/64]

**STATEMENT OF MATERIAL FACTS TO WHICH THE DEFENDANTS
CONTEND THERE IS NO GENUINE ISSUE**

The defendants, in support of their motion for summary judgment, say that they rely on the administrative record filed herein and, in particular, on the material facts contained in that record, which facts are

self-evident and beyond dispute. Following are material facts contained in the record to which there is no genuine issue:

1. Plaintiff was appointed to the Metropolitan Police Department on November 28, 1949, at the age of 31.
2. The Board of Police and Fire Surgeons' diagnosis of plaintiff was "psychological reaction-multiple", and recommended that he be retired for disability.
3. Plaintiff was found disabled by the Police and Firemen's Retirement and Relief Board and was retired for a disability not incurred in the performance of duty as of October 31, 1961.
4. The unanimous decision of the Police and Firemen's Retirement and Relief Board was unanimously sustained by the defendant Commissioners of the District of Columbia.

/s/ Chester H. Gray
Corporation Counsel, D. C.

/s/ John A. Earnest
Assistant Corporation Counsel, D.C.

/s/ William F. Patten
Assistant Corporation Counsel, D.C.

[Certificate of Service
14 August 1964]

[Filed 11/20/64]

ORDER

Upon consideration of plaintiff's motion for summary judgment, on Counts I and II, of the complaint the memorandum of points and authorities in support thereof, the motion of defendants for summary judgment on Counts I and II of the complaint, the memorandum of points and authorities in support thereof, the exhibits attached to the respective mo-

tions, the oppositions filed by the respective parties and upon oral argument in open court, and it appearing to the court that there is no genuine issue as to any material fact, it is, by the court this 20th day of November 1964.

ORDERED: The plaintiff's motion for summary judgment by, and the same is, hereby denied, and it is:

FURTHER ORDERED: That defendant's motion for summary judgment be, and it is, hereby granted.

/s/ George L. Hart, Jr.
Judge

[Certificate of Service
12 November 1964]

[Filed 12/17/64]

NOTICE OF APPEAL

Notice is hereby given this 17th day of December, 1964, that Frederick C. Zangardi hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 20th day of November, 1964 in favor of Walter N. Tobriner, President, Frederick J. Clarke, Member and John B. Duncan, Member, Board of D.C. Commissioners against said Frederick C. Zangardi.

/s/ Norman H. Heller
Attorney for Plaintiff

[Certificate of Service
17 December 1964]

DOCKET ENTRIES1962

Mar. 24	Complaint, appearance.
Mar. 24	Summons, copies (3) and copies (3) of Complaint issued all served 3-26-62.
Apr. 16	Answer of defts to complaint; c/m 4-16-62; appearance of Chester H. Gray & George H. Clarke.
Apr. 16	Calendared (AC/N).
Jul. 2	Motion of pltf for summary judgment; c/m 7/1/62; statement; exhibit "A"; P&A; MC 7/2/62.
Jul. 9	Consent order extending time for defts to oppose motion of pltf for summary judgment to 8/1/62, Holtzoff, J.
Aug. 1	Motion of defts for summary judgment on count I of complaint; P&A; c/m 8/1/62; MC 8/1/62.
Aug. 2	Statement of genuine issues by defts; c/m 8/2/62.
Aug. 2	Statement of material facts by defts; c/m 8/2/62.
Oct. 3	Called; Asst. Pretrial Examiner.
Oct. 23	Order denying pltf's motion for summary judgment; granting defts motion for summary judgment on Count II and dismissing Count II of the complaint, McLaughlin, J.
Nov. 13	Notice of appeal by pltf from order of 10/23/62. Deposit by Heller \$5.00. Copies mailed to Tobriner, Duncan & Clarke.
Nov. 13	Cost bond on appeal in sum of \$250.00 with Glens Falls Ins. Co., approved.
Dec. 14	Record on Appeal Delivered to USCA. Deposit by Norman H. Heller 80¢.
Dec. 14	Receipt from USCA for original papers.

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Mar. 12	Change of address of pltf's. atty to 711 14th St., N.W.
Mar. 12	Motion of pltf. to vacate order and for entry of judgment on Count II; P&A; c/m 3-11-63; M.C. 3-12-63.
Mar. 12	Motion of pltf. to stay Rule 13, P&A; c/m 3-11-63; M.C. 3-12-63.
Mar. 19	Points & Authorities of defts. in opposition to pltf's. motion to vacate order and for entry of final judgment; c/m 3-19-63.
Apr. 2	Order granting pltf's motion to stay rule 13 until 5/15/63, Matthews, J.
Apr. 2	Order granting pltf's motion to vacate order of 10/23/62 and for entry of final judgment on Count II, McLaughlin, J.
Apr. 29	Notice of appeal by pltf. from order 4-2-63; \$5.00 deposit by Heller; Copy to George Clark.
Apr. 29	Cost bond on appeal by pltf. in sum of \$250.00 with Glens Falls Insurance Co., approved and —
Jun. 5	Record on Appeal delivered to U.S.C.A. Deposit by Heller, \$1.10.
Jun. 5	Receipt from U.S.C.A. for original record.
Jun. 6	Receipt from U.S.C.A. for return of original record.
Jun. 6	Motion of plaintiff to transmit additional portions of record on appeal, P&A's, c/m 6-6-63. MC 6-6-63.
Jun. 20	Order granting plaintiff's motion for transmission of additional portions of record on appeal, McLaughlin, J.
Jun. 26	Supplemental Record on Appeal delivered to U.S.C.A.; Deposit by Heller \$.50.
Jun. 26	Receipt from U.S.C.A. for Supplemental Record.
Jul. 10	Certified copy order U.S.C.A. dismissing appeal.

1964

Mar. 24	Certified copy judgment U.S.C.A. remanding cause to U.S.D.C. for further proceedings, opinion attached.
Mar. 31	Original record returned from U.S.C.A.
May 12	Bill of costs as taxed by Clerk U.S.C.A. in amount of \$144.09.
Jun. 2	Motion of plaintiff for summary judgment, Statement, P&A, c/m 6-2-64, MC 6-2-64.
Jun. 12	Stipulation extending time for defendants to answer motion for summary judgment to and including 6-26-64.
Jun. 29	Stipulation of counsel extending time for defendants to file opposition to motion for summary judgment to and including 7-9-64.
Jul. 9	Stipulation extending time for defendants to oppose plaintiff's motion for summary judgment to July 16, 1964.
Jul. 16	Stipulation extending time for defendants to oppose motion for summary judgment to and including 8-7-64.
Aug. 7	Stipulation extending time for defendants to oppose the motion for summary judgment to and including 8-14-64.
Aug. 14	Motion of defendants for summary judgment, P&A, statement, exhibits A thru S, c/m 8-14-64, MC 8-14-64.
Aug. 14	Opposition of defendants to motion of plaintiff for summary judgment c/m 8-14-64.
Nov. 20	Order denying plttf's motion for summary judgment & granting deft's motion for summary judgment. Hart, J.
Dec. 17	Notice of Appeal by plaintiff from order of November 20, 1964, Deposit \$5.00 by Heeler.
Dec. 17	Cost bond on appeal in amount of \$250.00 with Glens Falls Insurance Co., approved.

Dec. 17 Statement of points on appeal by plaintiff, c/m
12-17-64.

1965

Jan. 22 Record on Appeal delivered to U.S.C.A.; Deposit by
Norman H. Heller \$1.70.

Jan. 22 Receipt from U.S.C.A. for Original papers.

BRIEF FOR APPELLEES

**UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit**

No. 19,138

FREDERICK C. ZANGARDI,

Appellant,

v.

**WALTER N. TOBRINER, et al.,
Board of Commissioners, D. C.,**

Appellees.

**Appeal From The United States District Court
For The District Of Columbia**

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 9 1965

Nathan J. Paulson
CLERK

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Corporation Counsel, D. C.
MILTON D. KORMAN,
Principal Assistant
Corporation Counsel, D. C.
HUBERT B. PAIR,
Assistant Corporation
Counsel, D. C.
RICHARD W. BARTON,
Assistant Corporation
Counsel, D. C.
Attorneys for Appellees,
District Building,
Washington, D. C. 20004

QUESTION PRESENTED

In the opinion of appellees, the question is:

Is not a member of the Metropolitan Police Department,
retired October 31, 1961, for disability resulting from the aggrava-
tion, by the performance of duty, of a non-service connected injury
or disease, ineligible, under D. C. Code, 1961, § 4-527, for
retirement for disability incurred in the performance of duty?

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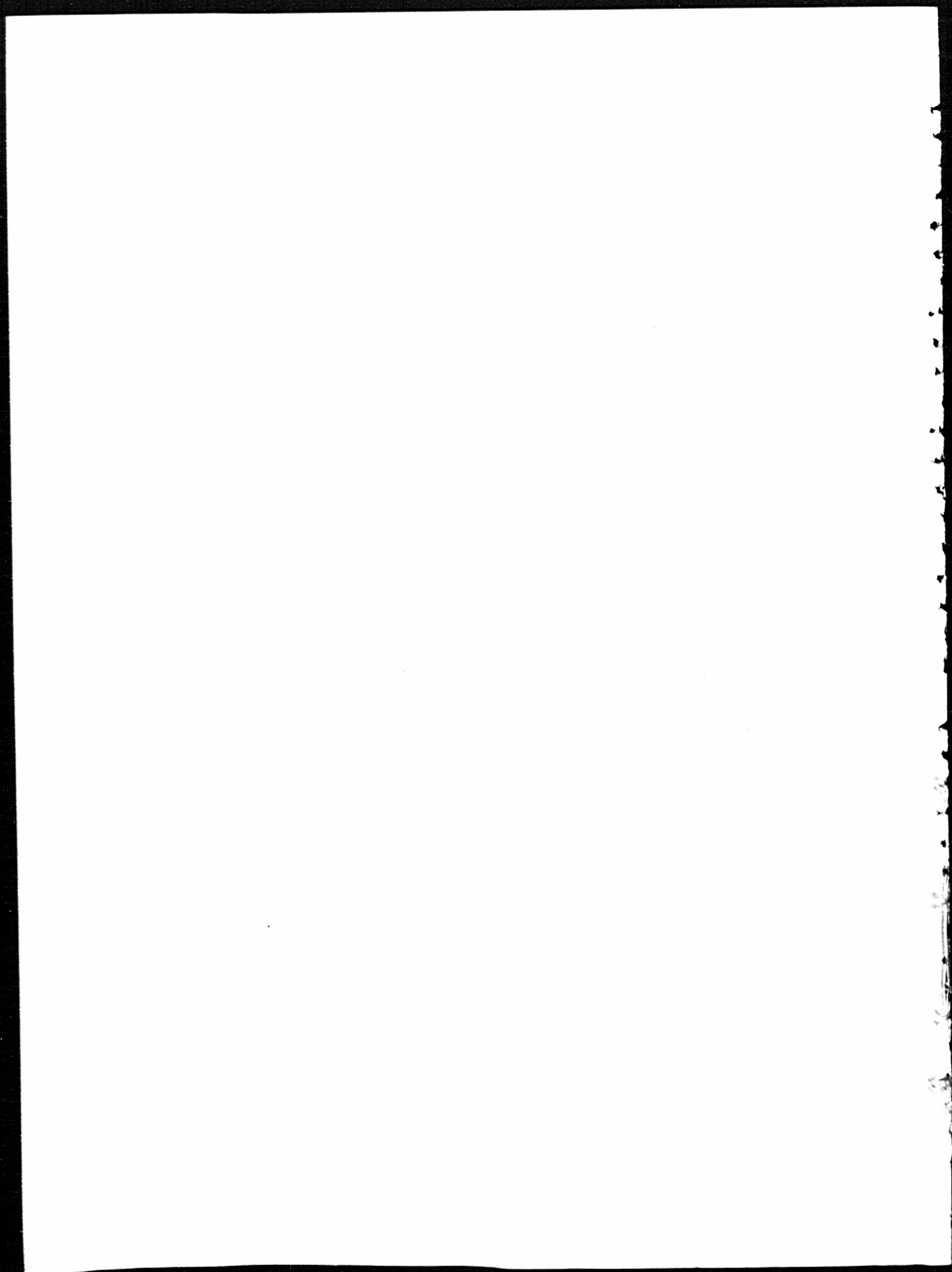
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<u>Appellant is not entitled to be retired,</u> <u>under D. C. Code, 1961, § 4-527,</u> <u>for disability incurred in the per-</u> <u>formance of duty</u>	5
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DISTRICT OF COLUMBIA CODE, 1961, CITED

Section 4-526	2, 3
Section 4-527	i, 2-6
Section 4-527 (2) (Supp. IV, 1965)	2, 6

OTHER AUTHORITIES CITED

House of Representatives Bill 6836, 87th Congress, 1st Session	7
House of Representatives Report No. 892, 87th Congress, 1st Session	7, 8
Senate Report No. 2271, 87th Congress, 2d Session	7



UNITED STATES COURT OF APPEALS
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FREDERICK C. ZANGARDI,

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Board of Commissioners, D. C.,

Appellees.

Appeal From The United States District Court
For The District Of Columbia

BRIEF FOR APPELLEES

COUNTER-STATEMENT OF THE CASE

In June 1961, appellant, a long-time member of the Metropolitan Police Department, was found by the Board of Police and Fire Surgeons to be suffering from a condition diagnosed as psychophysiological reaction, multiple, and recommended for disability retirement (J. A. 1-2, 20).

In October 1961, the Police and Firemen's Retirement and Relief Board, upon consideration of the evidence adduced at the hearings before it, " * * * was unable to find any evidence that would support a conclusion that Private Zangardi's condition arose from police duty." There was, however, " * * * ample reason to find that police duty aggravated his condition" (J. A. 2-3).

The Board ordered appellant retired, effective October 31, 1961, for disability incurred other than in the performance of duty, pursuant to D. C. Code, 1961, § 4-526, which provides for an annuity of 40 per cent of a member's basic salary (J. A. 3, 20).

Appellant then appealed to appellees, Commissioners of the District of Columbia, contending that, since the condition which caused his disability, even though it did not arise from the performance of duty, had, admittedly, been aggravated by police duty, he was entitled to be retired for disability incurred in the performance of duty, pursuant to D. C. Code, 1961, § 4-527, under which he would receive an annuity of 66 2/3 per cent of his basic salary (J. A. 2, 20).

Having been advised by the Corporation Counsel that, under the law then in effect,¹ a police officer disabled as a result

¹ Effective October 23, 1962, the law was changed. See D. C. Code, Supp. IV, 1965, § 4-527 (2).

of the aggravation, by the performance of duty, of a non-service connected injury or disease was not eligible to be retired for disability incurred in the performance of duty, appellees, on January 29, 1962, rejected appellant's contention and sustained the order of the Retirement Board (J. A. 3-4).

Alleging, inter alia, that appellees' action in retiring him under § 4-526, rather than under § 4-527, was based upon an improper interpretation of the law, appellant, on March 24, 1962, brought suit against appellees in the court below seeking, in count one, a mandatory injunction directing appellees to reverse their decision retiring him under § 4-526, to retire him under § 4-527, and to pay him the difference between the respective annuities, and, in count two, a declaratory judgment that § 4-527 " * * * includes aggravation of an injury or disease which did not originally arise in the performance of duty" and that appellant was entitled to be retired under § 4-527, rather than under § 4-526 (J. A. 1-5).

In their answer to the complaint, appellees admitted that the condition which resulted in appellant's disability, although not arising from the performance of police duty, had been aggravated by police duty, and that they had consistently interpreted § 4-527 to be inapplicable to such cases (J. A. 6-7).

Thereafter, cross-motions were filed for summary judgment on both counts of the complaint together with the record of the administrative proceedings relating to appellant's retirement. In their respective motions, appellant and appellees agreed that there existed no genuine issue of material fact to be litigated and that the sole question presented was whether, upon the pleadings and the administrative record, appellant or appellees were entitled to judgment as a matter of law (J. A. 17-18, 19).

Following a hearing, the court below, on November 20, 1964, entered an order denying appellant's motion for summary judgment and granting appellees' motion for summary judgment (J. A. 20). This appeal followed (J. A. 21).

SUMMARY OF THE ARGUMENT

Subsequent to appellant's retirement, the Congress, at the instigation of the Commissioners of the District of Columbia, amended D. C. Code, 1961, § 4-527, so as to provide that, on and after October 23, 1962, a police officer disabled as a result of the aggravation by the performance of duty of a non-service connected injury or disease would be entitled to retirement for disability incurred in the performance of duty. As its history clearly reflects,

the Congress, in enacting this amendatory legislation, recognized and acknowledged that the law in effect at the time of appellant's retirement did not so provide. It follows that the construction of the statute which appellant urges cannot be sustained.

ARGUMENT

Appellant is not entitled to be retired, under
D. C. Code, 1961, § 4-527, for disability
incurred in the performance of duty.

The sole question presented by this appeal is one of statutory construction. No factual controversy is involved. It is undisputed that appellant is permanently disabled for further duty as a police officer and that the condition which resulted in his disability, although not arising from the performance of duty, was aggravated by the performance of duty.

The court below held that, under such circumstances, appellant was not then entitled to be retired, pursuant to D. C. Code, 1961, § 4-527, for disability incurred in the performance of duty. Appellant's sole assignment of error (although phrased in different ways) is that this holding is erroneous.

Notwithstanding the clear language of the statute to the contrary, appellant argues that it was the intention of the Congress,

in enacting § 4-527, to provide that a police officer disabled as a result of the aggravation, by the performance of duty, of a non-service connected injury or disease would be entitled to retirement for disability incurred in the performance of duty.

That appellant's contention in this respect is utterly baseless is clearly demonstrated by the action of the Congress in amending the statute. See D. C. Code, Supp. IV, 1965, § 4-527 (2).

On October 23, 1962 (almost a year after appellant was retired), the Congress added a new subsection to § 4-527, reading:

"(2) In any case in which the proximate cause of an injury incurred or disease contracted by a member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of his retirement for each year or portion thereof of his service: Provided, That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement, nor shall it be less than 66 2/3 per centum of his basic salary at the time of retirement. "

Obviously then, the statute, as it existed at the time appellant was retired (i.e., as of October 31, 1961), cannot be

construed as appellant contends it should be, for such an interpretation would require a holding that the carefully-considered action of the Congress in amending the statute was completely unnecessary and served no useful purpose. It is, of course, axiomatic that no Act of Congress should be so construed unless such a result is manifestly compelled. And clearly that is not the case here.

It may, of course, be argued, although appellant does not do so (indeed, he completely ignores the amendment), that the Congress amended the statute for the sole purpose of correcting an administrative misinterpretation of its intention. The legislative history, however, refutes any such suggestion. Nowhere is there the slightest indication that the amendment was enacted for such purpose. On the contrary, both the House and Senate Reports ² indicate that the purpose of the legislation was:

" * * * to amend existing law so as to create an additional category of service-connected disability which will enable police-men and firemen to retire if an injury or disease contracted other than exclusively in the performance of duty is so aggravated by the performance of duty as to disable the member from further duty." [Emphasis supplied.]

² H. R. Report No. 892, 87th Cong., 1st Sess., and Senate Report No. 2271, 87th Cong., 2d Sess., which accompanied H. R. 6836, 87th Cong., 1st Sess.

Moreover, as clearly appears from H. R. Report No. 892, supra, it was the Commissioners of the District of Columbia and not the Congress, who instigated the amendatory legislation. Any suggestion then that such legislation was passed solely to correct an administrative misinterpretation of the intent of the Congress, rather than "to create an additional category of service-connected disability" cannot be sustained.

It must thus be manifest that, in enacting the amendment of October 23, 1962, the Congress clearly recognized and acknowledged that, under the law in effect prior thereto (and at the time of appellant's retirement), a police officer disabled as a result of the aggravation by the performance of duty of a non-service connected injury or disease was not eligible for retirement for disability incurred in the performance of duty. Indeed, upon the record, no other reasonable conclusion is possible. It follows of necessity that appellant's sole assignment of error lacks even a semblance of substance.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the judgment below is in all respects correct and in accordance with law and should, therefore, be affirmed.

CHESTER H. GRAY,
Corporation Counsel, D. C.
MILTON D. KORMAN,
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